IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

M/s West Raj Gum Udhyog v. State of Rajasthan and others.

S.B.CIVIL WRIT PETITION NO.6479/1992
under Article 226 of the Constitution of India.

Date of Order : 14th March, 2005

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. J.L.Purohit, for the petitioner.
Mr. S.N.Tiwari, Dy. Govt. Advocate.

BY THE COURT :

The Government of Rajasthan under an order dated November 22, 1978 allowed 25% flat subsidy on power tariff to the small scale industrial units established under the State of Rajasthan during the period commencing from 1.4.1979 to 31.3.1984. The requisite guidelines to execute the order dated 22.11.1978 were declared and published by the Government on 22.11.1978. According to clause(6) of the guidelines declared on 22.11.1978 claim for subsidy for a period of three months is required to be made in next quarter of the year. It is also made clear in the guidelines that no claim for subsidy shall be entertained after a lapse of quarter of a year from the last date of the period for which subsidy is claimed.

The petitioner applied for grant of subsidy under the order dated 22.11.1978 and the same was allowed to him for the period April, 1983; August, 1983; December, 1983; April, 1984; August, 1984; December, 1984 and April, 1985, however, claim of the petitioner for grant of subsidy for the period commencing from May, 1985 to April, 1987 was rejected by the respondents being time barred. A challenge is given by the petitioner to this rejection of claim by way of filing the instant petition for writ.

The contention of the petitioner is that the requisite applications making claim for getting subsidy were made within the time prescribed but the same were not accepted by Shri L.C.Jain, the then Assistant Director-cum-General Manager, District Industries Centre, Barmer on the pretext that the scheme concerned was closed by Government of Rajasthan. The applications were ultimately accepted on 18.1.1988 by Shri J.N.Sharma who succeeded Shri L.C.Jain, as Assistant Director-cum-General Manager, District Industries Centre, Barmer. The petitioner has also placed on record a communication dated 16/22.3.1991 whereby the General Manager, District Industries Centre, Barmer made a recommendation to Senior Accounts Officer, Directorate of Industries, to pass necessary orders to release subsidy in favour of the petitioner firm. Counsel for the petitioner has put much reliance upon the

communication dated 16/22.3.1991 wherein the General Manager while making recommendation to make appropriate orders to release subsidy also stated that Shri L.C.Jain, the then Assistant Director-cum-General Manager, District Industries Centre, Barmer refused to accept applications for claiming subsidy by saying that the scheme for grant of subsidy was closed by the Government. According to counsel for the petitioner the petitioner submitted applications to claim subsidy in time but the petitioner was misled by Shri L.C.Jain, therefore, looking to the circumstances applications submitted by the petitioner and accepted by the respondents on 18.1.1988 were required to be treated to be submitted in time and subsidy should be paid to the petitioner firm.

The respondents in their reply have denied the allegation that the applications to claim subsidy were submitted by the petitioner but the same were not accepted by Assistant Director-cum-General Manager, District Industries Centre, Barmer. The relevant portion of the written reads as under:-

> 8.- “That the contents of para No.8 of the writ petition are not admitted in the manner it has been alleged by the petitioner. It is respectfully submitted that as stated in the para No.5, the scheme was in force upto 31.3.1984, and the petitioner was given the facility for the said period, but as per the directions of the State Government, this

facility could be provided for the claims which have been submitted before the authorities within time. It is pertinent to mention here that the petitioner did not submit any claim within time except the claims mentioned in para No.7 of the writ petition. It is also submitted that the petitioner has been provided the subsidy for the period upto April, 1985, because the petitioner submitted its claim well within time. It is also wrong to say that the petitioner submitted its claims for the period from May, 1985 to April, 1987 in time before Dy.Director, Industries Centre, Barmer in time.

9.- That the contents of para No.9 of the writ petition are denied in toto being false and afterthought. It is respectfully submitted that the petitioner did not present the claims for the period from May, 1985 to April, 1987. The petitioner by making false allegations, is trying to divert the kind attentions of this Hon'ble Court from the actual matrix of the facts and it is guilty of 'suppressio vari and suggestio falsi', and on this count alone its writ petition is liable to be dismissed.

18.- That in reply to contents of para No.18 of the writ petition, it is respectfully submitted that as stated hereinabove, the subsidy payable to the petitioner and alike for the industries established before 31.3.1984, can be made only if they have submitted their claims within time. It is pertinent to mention here that the subsidy has been provided to the petitioner for the claims which were produced before the

> respondents well within time. Admittedly, the claims in dispute were submitted by it on dt.10.1.1988 which were time barred, and hence, the subsidy could not be provided to the petitioner for the said claims rightly. A bare perusal of Annexure-21 also reveals that the State Government has directed to sanction the claims as per the provisions of rules, and since the petitioner was failed to submit its claims within time, it could not be sanctioned subsidy as provided by the rules. Thus, the allegations of the petitioner that petitioner was refused to consider the claims of the petitioner arbitrarily, are wrong."

The respondents in quite unambiguous terms denied the factual foundation on which the petitioner based its claim.

In view of the reply given by the respondents the facts involved in the petition are highly disputed and the same cannot be settled on basis of material available on record. It shall be quite dangerous to accept the claim of the petitioner on basis of communication dated 16/22.3.1991 as this too no where prescribes any definite evidence to prove the allegation of the petitioner that the applications to claim subsidy were submitted to Shri L.C.Jain within time period prescribed but the same was not accepted by Shri L.C.Jain. The acceptance of the document may result into acceptance of an afterthought or may be of a concocted story. The facts pleaded by the

petitioner in the petition are not sufficient to accept the allegation of the petitioner with regard to submission of claim applications within time prescribed specially when the respondents have disputed the same.

In result, this petition for writ fails as it involves highly disputed questions of fact which cannot be settled on the basis of material available on record. The writ petition is accordingly dismissed.

NO order as to cost.

(GOVIND MATHUR),J.

kkm/ps.